

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 KEVIN J. RIGLEY  
State Bar No. 131800  
4 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
5 Telephone: (213) 620-2558  
Facsimile: (213) 897-2804  
6 *Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4146

12 **JEREMIAH JOSEPH YABUT VIRAY**  
16262 Vermeer Drive  
13 Chino Hills, CA 91709

**A C C U S A T I O N**

14 Pharmacy Technician Registration  
15 No. TCH 100473

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about May 20, 2010, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 100473 to Jeremiah Joseph Yabut Viray (Respondent). The  
24 Pharmacy Technician Registration, which was in full force and effect at all times relevant to the  
25 charges brought herein, expired on May 31, 2012 and has not been renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

**STATUTORY PROVISIONS**

4. Section 118, subdivision (b) provides, in pertinent part that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.

7. Section 4301 states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

///

///

1       "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
3 whether the act is a felony or misdemeanor or not.

4       ....

5       "(l) The conviction of a crime substantially related to the qualifications, functions, and  
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
8 substances or of a violation of the statutes of this state regulating controlled substances or  
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
11 The board may inquire into the circumstances surrounding the commission of the crime, in order  
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
13 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
16 of this provision. The board may take action when the time for appeal has elapsed, or the  
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
21 indictment."

## 22                                   REGULATORY PROVISIONS

23       8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

24       "For the purpose of denial, suspension, or revocation of a personal or facility license  
25 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
26 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
27 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

28     ///

1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare."

### 3 COST RECOVERY

4 9. Section 125.3 states, in pertinent part, that the Board may request the administrative  
5 law judge to direct a licensee found to have committed a violation or violations of the licensing  
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of case.

### 7 FIRST CAUSE FOR DISCIPLINE

#### 8 (Conviction of a Substantially Related Crime)

9 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
10 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
11 Respondent was convicted of a crime substantially related to the qualifications, functions or  
12 duties of a pharmacy technician. On or about June 14, 2011, after pleading guilty, Respondent  
13 was convicted of one misdemeanor count of violating Penal Code section 459-460 subdivision (b)  
14 [burglary: second degree] and one misdemeanor count of violating Penal Code section 488  
15 subdivision (a) [petty theft] in the criminal proceeding entitled *The People of the State of*  
16 *California v. Jeremiah Joseph Yabut Viray* (Super. Ct. Orange County, 2011, No. 11HM04378).  
17 The Court sentenced Respondent to serve one (1) day in Orange County Jail and placed him on  
18 one (1) year probation, with terms and conditions. The circumstances surrounding the conviction  
19 are that on or about December 21, 2010, an Asset Protection Specialist for Target reviewed the  
20 surveillance video, observed Respondent scan an unused Target gift card, and load it with a \$300  
21 cash credit, without paying for it. From on or about December 17, 2010 through on or about  
22 December 20, 2010, Respondent was observed taking an unknown amount of cash from the  
23 register. When confronted by the Asset Protection Specialist, Respondent admitted to loading the  
24 gift card with a \$300 cash credit without placing any cash payment into the cash register. In  
25 addition, Respondent admitted that he had stolen an additional \$2,005.00 in cash from his  
26 employer on numerous occasions since November 6, 2010.

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

3  
4  
5  
6

## 7

8  
910  
11

12

13

14

15  
16

16

17  
18

26